25). The court's order, which was not accompanied by any explanatory memorandum, stated merely that it lacked jurisdiction over the subject matter and that the complaints failed to state a claim upon which relief could be granted (R. 18, 25).

On appeal, the Court of Appeals for the Eighth Circuit reversed (R. 26–37). The court confined its consideration to the two propositions upon which defendants relied to sustain the district court dismissals: that false claims submitted to Commodity Credit Corporation are not claims "against the Government of the United States or any department or officer thereof" within the meaning of the False Claims Act; and that relief may not be granted since there had been no specific allegation of damage in the complaints (R. 27): With respect to the first point—the sole question raised by petitioners (Pet. p. 2; Brief, p. 4)—the Court of Appeals held that claims against Commodity were within the purview of the Act (R. 30–35). In so holding, the court expressly rejected a contrary ruling of the Fourth Circuit in *McNinch, et al.* v. *United States*, 242 F. 2d 359, certiorari granted, 355 U. S. 808, No. 146, Oct. Term, 1957, now pending before this Court (R. 30). The Eighth Circuit, stressing this Court's decision in *United States ex rel. Marcus* v. *Hess*, 317 U. S. 537, declared that where the "ultimate source of payment of the fraudulent claims was the federal treasury * * * there can be no distinction between a government corporation or the government itself being defrauded" (R. 30–31). The Court of Appeals noted further the realistic approach taken by this Court in

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No. 276

In the Supreme Court of the United States

OCTOBER TERM, 1957

R. S. RAINWATER, SR., SLOAN RAINWATER, JR., WILLIAM RAINWATER, AS INDIVIDUALS AND AS PARTNERS, D/B/A R. S. RAINWATER AND SONS, AND CITIZENS NATIONAL BANK, WALNUT RIDGE, ARKANSAS, PETITIONERS

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES

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OPINIONS BELOW

The opinion of the Court of Appeals (R. 26–35) is reported at 244 F. 2d 27. The orders of the District Court for the Eastern District of Arkansas dismissing the Government's complaints (R. 18, 25) are not reported.

JURISDICTION

The judgments of the Court of Appeals were entered on May 3, 1957 (R. 36, 37), and petition for a rehearing denied on June 17, 1957 (R. 37). A peti-

tion for a writ of certiorari was filed on July 15, 1957 and was granted on October 14, 1957 (355 U. S. 811). The jurisdiction of this Court rests upon 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether a claim against funds of the Commodity Credit Corporation—a wholly-owned Government corporation, operating within and as part of the Department of Agriculture, the funds of which are furnished and, if necessary, supplemented by Congress on an annual basis—is a "claim upon or against the Government of the United States, or any department or officer thereof", within the meaning of the civil False Claims Act.

STATUTE INVOLVED

The civil False Claims Act (12 Stat. 696, 698, R. S. 3490, 5438, 31 U. S. C. 231) provides in relevant part:

> Any person not in the military or naval forces of the United States, or in the militia called into or actually employed in the service of the United States, who shall make or cause to be made, or present or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, any claim upon or against the Government of the United States, or any department or officer thereof, knowing such claim to be false, fictitious, or fraudulent, or who, for the purpose of obtaining or aiding to obtain the payment or approval of such claim, makes, uses, or causes to be made or used, any false bill, receipt, voucher, roll, ac-

> count, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry, or who enters into any agreement, combination, or conspiracy to defraud the Government of the United States, or any department or officer thereof, by obtaining or aiding to obtain the payment or allowance of any false or fraudulent claim, * * * shall forfeit and pay to the United States the sum of $2,000, and, in addition, double the amount of damages which the United States may have sustained by reason of the doing or committing such act, together with the costs of suit; and such forfeiture and damages shall be sued for in the same suit.

STATEMENT

The United States brought two separate actions under the civil False Claims Act (R. S. 3490, 5438, 31 U. S. C. 231, *supra*, p. 2) against R. S. Rainwater Sr., et al., and the Citizens National Bank of Walnut Ridge, Arkansas, seeking recovery for fraudulent claims made or caused to be made by those parties against the Commodity Credit Corporation in connection with the 1949 Cotton Loan Program. Following a consolidation of both actions for purposes of a hearing, the district court, without stating its reasons, granted defendants' motions to dismiss for lack of jurisdiction over the subject matter and for failure to state a claim upon which relief could be granted (R. 18, 25). The Court of Appeals for the Eighth Circuit, reversed and remanded both cases for trials on the merits (R. 26–37). The facts, as they appear from the relevant

pleadings, and the proceedings below, may be summarized as follows:

1. *Rainwater.*—The Rainwaters were partners in R. S. Rainwater & Sons, a firm engaged in the business of operating cotton gins and purchasing and selling cotton for its own account in the State of Arkansas (R. 1–2). During the period involved in this action, R. S. Rainwater & Sons was an approved Lending Agency under the 1949 Cotton Loan Program of the Commodity Credit Corporation (R. 3). On June 30, 1949, Commodity issued 1949 Cotton Bulletin I (14 F. R. 3723) containing regulations for the 1949 Cotton Loan Program, under which program loans were to be made available to cotton producers on the 1949 crop produced by them, as authorized by Section 1 of the Agricultural Act of 1948, 62 Stat. 1247, 7 U. S. C. 1282, and the Commodity Credit Corporation Charter Act, 62 Stat. 1070, 15 U. S. C. 714 (R. 2). This Bulletin limited loans to be made under the program to actual producers (landowner, landlord, tenant, or sharecropper) on the security of their own cotton, owned by them at the time of the loan (R. 2).[1] Cotton bought from a producer was not eligible for use as security for a loan to the buyer (R. 2). The Bulletin required a producer desiring a loan on his cotton to tender a properly executed 1949 Cotton Producer's Note and Loan Agreement (Cotton Form A) which represented, *inter alia,* that the

[1] Copies of Cotton Bulletin I, Form A, Cotton Producer's Note; Form D, Lending Agency Agreement; and Form C, Letter of Transmittal, were attached to the complaints as exhibits and are reproduced at R. 7–16.

maker had produced the cotton, and that he was eligible for a loan thereon in accordance with the terms of the Bulletin (R. 3). The Lending Agency Agreement between Commodity and R. S. Rainwater and Sons, authorizing the latter to make loans to producers of 1949 crop cotton, provided that loans were to be made to producers only, upon the tender of "duly executed" notes on the prescribed forms; that the date of each note was to be the date upon which the Lending Agency disbursed the loan proceeds to the producer; that disbursement was to be in the full amount stated in the note; and that the Lending Agency was not to make a loan on cotton known to it to be ineligible under the terms of 1949 Cotton Loan Bulletin I (R. 3). A note evidencing a loan was required to be tendered to Commodity within 15 days from the date of execution by means of a duly executed Lending Agency Letter of Transmittal (R. 3–4). The Letter of Transmittal contained certifications by the Lending Agency that the loans evidenced by the notes were made in good faith and in the belief that the cotton was eligible cotton as defined by the 1949 Bulletin; that the notes were not signed in blank and carried by the payee under collateral agreements which permitted the payee to retain the notes, date them at his discretion, and deliver them to Commodity; and that the full amounts of the notes were paid to the producers by the Lending Agency on the dates shown in the notes (R. 4). Commodity, in turn, was to pay to the Lending Agency the face value of the notes plus interest thereon at the rate of 1½ per

cent per annum from the date of such notes to the date of payment by Commodity (R. 4).

The Government's complaint in *Rainwater,* after setting forth the foregoing, charged as follows: At various times during 1949 the Rainwaters purchased from producers, for their own account, 135 bales of the 1949 cotton crop (R. 4); at the time of making certain of these purchases, the Rainwaters requested the sellers to sign 1949 Cotton Producers Note and Loan Agreements and to leave those instruments with them (R. 5); the cotton notes thus obtained were undated and incomplete as to other details when delivered to the Rainwaters (R. 5). The complaint further alleged that the Rainwaters' purpose in obtaining the notes was to put themselves in a position where, if they were facing a loss on the purchased cotton because of a declining market or if they desired to recoup some of the money which they had invested, they could complete the notes and, as a Lending Agency, forward them to Commodity Credit Corporation and receive from Commodity the loan value of the cotton plus interest (R. 5). This plan was said to have been effectuated by subsequently dating the notes and filling in the necessary information at various times and presenting them or causing them to be presented to Commodity within 15 days of those dates and thereafter receiving from Commodity, for themselves, the established loan amounts plus interest (R. 5). In connection with the remainder of the 135 bales of cotton, the Rainwaters did not obtain notes from the sellers at the time of the sales; rather, thereafter, the Rainwaters

contacted the sellers, persuaded them to sign notes for the previously sold cotton, and then, purporting to act as a Lending Agency, caused these notes to be forwarded to Commodity for payment of the loan value plus interest (R. 5). The 135 bales of cotton were listed as collateral upon ninety-eight notes, which notes, with their accompanying warehouse receipts, were transmitted to Commodity on fourteen Lending Agency Letters of Transmittal (R. 5).

The *Rainwater* complaint alleged that the previously described conduct constituted fraud upon the United States and violations of the civil False Claims Act (R. 6). It was averred that the Rainwaters knew that the cotton described in the notes was ineligible for pledging under the 1949 program and that the notes did not represent advances made to cotton producers in connection with loans under the program, in accordance with the Lending Agency Agreement obligations (R. 6). The complaint concluded that as a result of the Rainwaters' conduct Commodity accepted the notes and cotton collateral as representing valid transactions under the loan program and paid the amount of the notes with interest, whereas, if Commodity had known the true facts, it would have refused to accept the notes or pay anything thereon (R. 6). Judgment was sought for the amounts provided in 31 U. S. C. 231, *supra*, p. 2 (R. 6).

2. *Citizens National Bank.*—The complaint in the *Citizens National Bank* case set forth basically the same matters referred to above in the *Rainwater* proceedings (R. 18–23). The complaint against the bank

determining an identity with the Government, in comparable circumstances, of other corporate agencies and affirmed that, at least with respect to its funds, Commodity and the Government were indistinguishable (R. 32–35). As to the second proposition, the court below held that the complaints, which asked "for the amounts provided for in 31 U. S. C. 231", did contain allegations of damage, and that if no specific damages were proved the Government could still recover the forfeitures prescribed by the Act (R. 27–28). The Court of Appeals, accordingly, reversed the district court's dismissals and remanded the cases for trial (R. 35).

ARGUMENT

FRAUDULENT CLAIMS PRESENTED OR CAUSED TO BE PRESENTED TO COMMODITY CREDIT CORPORATION CONSTITUTE CLAIMS AGAINST THE "GOVERNMENT OF THE UNITED STATES" UNDER THE CIVIL FALSE CLAIMS ACT

The sole question which petitioners here raise is identical to the first question presented in *United States* v. *McNinch, et al., supra,* No. 146, now pending before the Court. The arguments set forth in Part I (pp. 19–44) of the Government's brief in *McNinch* urging that fraudulent claims against Commodity Credit Corporation are within the purview of the civil False Claims Act, have equal application here and are, accordingly, incorporated by reference.[2] The remaining matters with which *McNinch* deals—those relating to claims against the Federal Housing

[2] In its order allowing certiorari the Court directed that the present case be assigned for argument immediately following *McNinch* (R. 38).

Administration for credit insurance—have no bearing on the *Rainwater* proceedings.

CONCLUSION

For the reasons stated in Part I of the Government's brief in No. 146, it is respectfully submitted that the decision below should be affirmed.

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MARCH 1958.

U. S. GOVERNMENT PRINTING OFFICE: 1958